HAJI ABDULLAH & ORS. v. IBRAHIM & ORS.

[O.C.J. (MacIntyre J.) June 5, 1965]

[Ipoh — Civil Suit No. 294 of 1963]

Practice and Procedure — Charitable trust — Suit must be brought in the name of Attorney-General or with his consent — Government Proceedings Ordinance, 1956, s. 9.

On a question whether a suit relating to a charitable trust is maintainable against the defendants on the ground that it can only be brought by or in the name of the Attorney-General or with his consent,

Held: as the reliefs claimed in this action were brought on behalf of a charitable trust and were not among the claims specified in section 9(1) of the Government Proceedings Ordinance, 1956, the suit should have been brought and had in the name of the Attorney-General.

Case referred to:—

(1) *Cheah Ewe Chong & Anor.* v. *Cheah Kee Ee & Ors.* [1934] M.L.J. 212.

CIVIL SUIT.

P. P. Dharmananda for the plaintiffs.

W. S. W. Davidson for defendants 1, 2 and 3.

N. Sharma for defendant 4.

MacIntyre J.: In this case, Mr. Davidson on behalf of defendants Nos. 1, 2 and 3, and Mr. Sharma on behalf of defendant No. 4, have taken the point that this suit is not maintainable and is bad in law on the ground that it can only be brought by or in the name of the Attorney-General or with the consent of the Attorney-General. They rely on section 9(3) of the Government Proceedings Ordinance No. 58 of 1956 in support of their argument.

Mr. Dharmananda for the plaintiffs did not seriously contest the point and suggested that in the event of my holding that the suit should have been brought by the Attorney-General, I should give leave to the plaintiffs to substitute the Attorney-General as was done in the case of *Cheah Ewe Chong & Anor.* v. *Cheah Kee Ee & Ors.*[1]

Section 9(1) of the Government Proceedings Ordinance, 1956 lays down the rule that where certain specified reliefs mentioned therein are sought by way of a suit in relation to any alleged breach of any express or constructive trust, or in regard to the administration of any trust for public, religious, social or charitable purposes, the Attorney-General or two or more persons with the written consent of the Attorney-General may institute the necessary proceedings in court.

Sub-section (2) of section 9 merely emphasises the necessity to conform to the provisions of sub-section (1) if any of the reliefs mentioned therein are claimed.

Sub-section (3) lays down the rule that except as to the procedure to be followed in obtaining the reliefs specified in sub-sections (1) and (2), all other suits and proceedings relating to any such trust or otherwise in which the Government is interested, or in which the interest of the public are affected, or which if brought in England the Attorney-General of England would be a necessary party, shall be brought and had in the name of the Attorney-General as plaintiff or defendant.

Since the reliefs claimed in the present action are brought on behalf of a charitable trust and are not among the claims specified in sub-section (1), I hold that sub-section (3) applies and that the suit should have been brought and had in the name of the Attorney-General.

As for the oral application by Mr. Dharmananda for leave to amend the statement of claim to substitute the Attorney-General, I am satisfied this is a proper case in which I should grant that indulgence since the suit is brought on behalf of a charitable trust, and the plaintiffs have no personal axe to grind. However, I am unable to make an order at this stage without the consent of the Attorney-General.

Further hearing of the suit is therefore adjourned to the 19th July 1965 to enable the plaintiffs to apply to substitute the Attorney-General. In default, the case will stand dismissed with costs; the costs to be borne personally by the plaintiffs. If, however, in the meantime the Attorney-General is substituted then all questions of costs would be reserved for argument on the adjourned date.

Order accordingly

Solicitors: *Dharmananda & Co.; Gibb & Co.; N. Sharma.*

PHUMAN SINGH v. KHO KWANG CHOON

[F.C. (Thomson L.P., Wylie C.J. (Borneo) and Tan Ah Tah F.J.) June 8, 1965]

[Kuching — Federal Court Civil Appeal No. 82 of 1964]

Moneylending — Money loans on security of land charged — Whether charge is "document of debt" — Difficulties of interpretation — Moneylenders Ordinance (Cap. 114), ss. 3 & 4.

Land Laws — Sale of land charged as security for loans — Application for — Charge not registered in court — Land Code (Cap. 81), s. 148(2)(c).

The appellant, a registered moneylender, made an application by originating summons for an order of sale of land which had been charged by the respondent to him as security for loans of various sums of money. The respondent applied for an order that the originating summons be dismissed on the ground that the proceedings were bad for want of compliance with section 3(1) and section 4 of the Moneylenders Ordinance of Sarawak. It was only after this application but before the hearing that the charges were registered in the High Court in purported pursuance of section 3(1) of the Ordinance. The trial judge dismissed the application of the appellant on the ground that the registration of the charges under the Moneylenders Ordinance after an application